

REMARKS

This responds to the Office Action mailed on September 26, 2007. Claims 1, 26, 30, 32, 34, 56-68 and 90 are amended herein and are fully supported by the present application as filed; claim 25 is canceled herein; and no claims are new. Accordingly, claims 1-24 and 26-90 are currently pending and responded to in this response.

Applicants hereby respectfully request further examination and reconsideration of this application in view of the foregoing claim amendments and following remarks.

§103 Rejections of the Claims

Claims 1-20, 25-26, 28-30, 34-40, 48-68 and 90 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Hageman (U.S. Patent No. 5,231,814) in view of Wentworth (U.S. Patent No. 4,364,984). Applicants respectfully traverse this rejection for the reasons set forth below.

Claim 27 was rejected under 35 USC § 103(a) as being unpatentable over Hageman (U.S. Patent No. 5,231,814), in view of Wentworth (U.S. Patent No. 4,364,984) as described above for claims 1-20, 25-26, 28-30, 34-40, 48-68 and 90, in further view of Naipawer, III et al. (U.S. Published Patent Application No. 2002/0037405). Applicants respectfully traverse this rejection for the reasons set forth below.

Claim 31 was rejected under 35 USC § 103(a) as being unpatentable over Hageman (U.S. Patent No. 5,231,814) in view of Wentworth (U.S. Patent No. 4,364,984) as described above for claims 1-20, 25-26, 28-30, 34-40, 48-68 and 90, in further view of Adelman (U.S. Patent No. 4,263,360). Applicants respectfully traverse this rejection for the reasons set forth below.

Claims 21-24 and 32-33 were rejected under 35 USC § 103(a) as being unpatentable over Hageman (U.S. Patent No. 5,231,814) in view of Wentworth (U.S. Patent No. 4,364,984) as described above for claims 1-20, 25-26, 28-30, 34-40, 48-68 and 90, in further view of Fahmy et al. (U.S. Patent No. 6,286,280). Applicants respectfully traverse this rejection for the reasons set forth below.

Claims 72-74 and 79-80 were rejected under 35 USC § 103(a) as being unpatentable over Hageman (U.S. Patent No. 5,231,814) in view of Wentworth (U.S. Patent No. 4,364,984) as described above for claims 1-20, 25-26, 28-30, 34-40, 48-68 and 90, in further in view of Narukawa et al (U.S. Patent No. 4,148,781). Applicants respectfully traverse this rejection for the reasons set forth below.

Claims 41-47 were rejected under 35 USC § 103(a) as being unpatentable over Hageman (U.S. Patent No. 5,231,814) in view of Wentworth (U.S. Patent No. 4,364,984) as described above for claims 1-20, 25-26, 28-30, 34-40, 48-68 and 90, in further in view of Speaks et al. (U.S. Patent No. 5,665,798). Applicants respectfully traverse this rejection for the reasons set forth below.

Claims 75-78 were rejected under 35 USC § 103(a) as being unpatentable over Hageman (U.S. Patent No. 5,231,814) in view of Wentworth (U.S. Patent No. 4,364,984) as described above for claims 1-20, 25-26, 28-30, 34-40, 48-68 and 90, in further in view of Ueda et al. (U.S. Patent No. 5,064,592). Applicants respectfully traverse this rejection for the reasons set forth below.

Claims 69-71 were rejected under 35 USC § 103(a) as being unpatentable over Hageman (U.S. Patent No. 5,231,814) in view of Wentworth (U.S. Patent No. 4,364,984) as described above for claims 1-20, 25-26, 28-30, 34-40, 48-68 and 90, in further in view of Wilson et al. (U.S. Patent No. 6,251,495). Applicants respectfully traverse this rejection for the reasons set forth below.

Claims 81-89 were rejected under 35 USC § 103(a) as being unpatentable over Hageman (U.S. Patent No. 5,231,814) in view of Wentworth (U.S. Patent No. 4,364,984) as described above for claims 1-20, 25-26, 28-30, 34-40, 48-68 and 90, in further in view of Radcliffe et al. (U.S. Patent No. 6,136,408). Applicants respectfully traverse this rejection for the reasons set forth below.

I. No Prima Facie Case of Obviousness

Applicants respectfully traverse each of the above rejections on the ground that no *prima facie* case of obviousness has been established. The Examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness. *In re Fine*, 837 F.2d 1071, 1074 (Fed. Cir. 1988). If the Examiner does not establish a *prima facie* case, the applicants are under no obligation to submit evidence of non-obviousness. M.P.E.P. § 2142. To establish a *prima facie* case of obviousness, three criteria must be met.

First, the reference (or references) relied upon must teach or suggest all the limitations of the claims. See *In re Wilson*, 424 F.2d 1382, 1385 (CCPA 1970) ("All words in a claim must be considered in judging the patentability of that claim against the prior art.").

Second, the reference (or references) relied upon, coupled with the knowledge generally available in the art at the time of the invention, must contain some suggestion or incentive that would have motivated the skilled artisan to modify a reference or to combine references. See *In re Fine*, 837 F.2d 1071, 1074 (Fed. Cir. 1988); *In re Skinner*, 2 U.S.P.Q.2d 1788, 1790 (Bd. Pat. App. & Int. 1986).

Third, the proposed modification of the reference (or references) relied upon must have had a reasonable expectation of success, determined from the vantage point of the skilled artisan at the time the invention was made. In other words, a hindsight analysis is not allowed. See *Amgen, Inc. v. Chugai Pharm. Co.*, 927 F.2d 1200, 1209, 18 U.S.P.Q.2d 1016, 1023 (Fed. Cir. 1991); *In re Erlich*, 3 U.S.P.Q.2d 1011, 1016 (Bd. Pat. App. & Int. 1986).

IA. References relied upon do not teach or suggest all the limitations of the claims

The present claims recite:

contacting the blanket of substantially oriented uncured flakes with a radiant barrier material having apertures extending therethrough, wherein the radiant barrier material has a pair of outer surfaces and a second resin located on at least a portion of one side of the pair of outer surfaces of the radiant barrier material, such that when the blanket of substantially oriented uncured flakes is contacted with the radiant barrier material, the blanket of substantially oriented flakes contacts the second resin (see, claims 1 and 90, (iii), emphasis added).

None of the references cited above disclose or suggest contacting a blanket of substantially oriented uncured flakes with a radiant barrier material having apertures extending therethrough, as claimed by Applicants. Applicants respectfully indicate they were the first to contact oriented uncured flakes having a first resin thereon, with a radiant barrier material having a second resin located thereon, and subsequently curing both resins to provide a radiant barrier oriented strand board.

Because the cited documents, alone or in combination, do not teach or suggest all the limitations of Applicants' claims, a *prima facie* case of obviousness cannot be maintained. Accordingly, Applicants respectfully request reconsideration and withdrawal of the rejection.

IB. References relied upon teach away from the proposed modification or combination

Motivation may be lacking when the state of the art at the time of the invention in question was discovered pointed researchers in a different direction than the inventor proceeded. Indeed, the Federal Circuit has repeatedly recognized that proceeding contrary to the accepted wisdom in the art represents "strong evidence of unobviousness." *In re Hedges*, 783 F.2d 1038, 1041 (Fed. Cir. 1986); *W.L. Gore & Assocs., Inc. v. Garlock, Inc.*, 721 F.2d 1540, 1552 (Fed. Cir. 1983). The Federal Circuit has further recognized that prior art may be considered not to teach the proposed modification or combination when the stated objectives of such art reinforce

an interpretation. *WMS Gaming Inc. v. International Game Tech.*, 184 F.3d 1339, 51 U.S.P.Q.2d 1385 (Fed. Cir. 1999).

According to the Court of Customs and Patent Appeals, the suggestion to combine references must not require substantial reconstruction or design of the references to arrive at the claimed invention. *In re Ratti*, 270 F.2d 810, 123 U.S.P.Q. 349 (CCPA 1959)(emphasis added).

IBi. Hageman (U.S. Patent No. 5,231,814) teaches away from backing materials that are perforated

One skilled in the art, upon reading Hageman (U.S. Patent No. 5,231,814), would not be motivated to contact uncured flakes of wood with a radiant barrier material (i.e., combination of metallic foil and backing material) having apertures extending therethrough, as claimed by Applicants. Specifically, one skilled in the art would not be motivated to employ a radiant barrier material, which is a combination of metallic foil and backing material, wherein both the metallic foil and backing material have apertures extending therethrough. The article of manufacture described in Hageman is manufactured via a “post press” method, and the apertures in the foil are employed solely to provide the requisite vapor permeability for the article of manufacture, while in use. Since the kraft paper described therein possesses the requisite vapor permeability, one skilled in the art would not be motivated to employ backing material (e.g., kraft paper) having apertures. For example, Hageman states:

Of particular importance to the present invention is the provision of a plurality of perforations **18** through the layer of metallic foil. The provision of perforations **18** is particularly important because it eliminates problems associated with trapped moisture in structural materials made of wood, which moisture can lead to rapid degradation or decay of the materials. Perforations **18** permit the materials to “breathe”. The foil material, with its kraft paper backing, is applied to only one major surface of the plywood which, in use, will be the inwardly facing surface, to allow free moisture to escape. This free moisture is largely due to accumulation of moisture in the plywood attributable to rain prior to the “drying in” stage of construction. U.S. Patent No. 5,231,814, column 2, lines 43-55.

As shown in FIGS. 2 and 3, the perforations extend only through metallic foil **16** and not through the kraft paper **17** to which it is

attached. The kraft paper is, in itself, capable of breathing and need not be perforated. U.S. Patent No. 5,231,814, column 3, lines 5-9, emphasis added.

Unnecessarily introducing apertures into the backing material (e.g., kraft paper) carries with it the heightened risk that the backing material will rip or tear, introduces an additional step that is time-consuming, incurs additional labor costs and/or requires additional manufacturing equipment. As such, one skilled in the art, upon reading Hageman, would not be motivated to incur the risks above when there is no perceived advantage of perforating the backing material. Specifically, since the backing material possesses the requisite vapor permeability ("the kraft paper is, in itself, capable of breathing and need not be perforated"), one of skill in the art would not be motivated to perforate the backing material given the known inherent risks associated with employing perforated backing materials.

Because Hageman teaches away from backing materials that are perforated, a *prima facie* case of obviousness cannot be maintained. Accordingly, Applicants respectfully request reconsideration and withdrawal of the rejection.

IBii. Wentworth (U.S. Patent No. 4,364,984) teaches away from employing, on the outer surface(s), radiant barrier material having apertures extending therethrough

One skilled in the art, upon reading Wentworth (U.S. Patent No. 4,364,984), would not be motivated to employ, on the outer surface(s) of the radiant barrier oriented stand board, a radiant barrier material (i.e., combination of metallic foil and backing material) having apertures extending therethrough, as claimed by Applicants. Wentworth describes an article of manufacture having a central core of three layers of wood strands sandwiched between two outer surface-forming layers of fine wood particles (see, Abstract; column 3, lines 29-30 and 46-49; column 4, lines 28-30). Both surface-forming layers are composed of fine wood particles of various sizes distributed in an unoriented graduated size pattern from the outer surface to the central core, with the progressively smaller or finer wood particles closer to the outer surface of the surface layers (see, *Id.*). In fact, Wentworth's objective of having an article of manufacture with exterior surface properties typifying natural solid wood lumber is at odds with the claimed

disposition of a radiant barrier material on an outer board surface (see, column 2, lines 28-32; column 4, lines 36-40.) Preferred articles of manufacture described in Wentworth possess either a smooth finished surface or a decorative surface finish. See, e.g., column 2, lines 13-14, 31-32 and 49; column 4, lines 23-24, 28, 38-40; column 6, line 66; and column 7, lines 4-5. Wentworth provides the utility of a decorative or smooth surface finish. For example, Wentworth states:

As a result of the graduated size distribution of the fines forming the surface layers 13, the exposed outer surfaces 22 are formed by densely packed wood particles having insignificant, if any, voids between them. Consequently, a smooth surface finish can be formed on the exposed outer surfaces comparable to finishes achievable on surfaces of natural solid wood.

In many wood product applications, decorative finishes other than smooth surface finishes are desired. For example, the formed multilayer particleboard can be further processed to create mechanically a simulated wood grain finish on its exposed outer surfaces 22. Furthermore, the ability to form a smooth finish on the exposed surfaces enables the multilayer particleboard of the present invention to be used as a substrate for decorative overlays, such as clear films, printed papers, foils and the like. Substrates with rough finishes can form impressions in such overlays that detract from their decorative effect. U.S. Patent No. 4,364,984, column 6, line 62 to 7, line 12, emphasis added.

In brief, Wentworth states that the article of manufacture will preferably possess either a smooth finished surface or a decorative surface finish. In contrast to Wentworth, the Applicants' claim radiant barrier material provides several utilities including, e.g., the ability to reflect radiant energy thereby lowering energy costs associated with air conditioning in dwelling located in warmer climates. See Applicants' application, e.g., page 5, line 27 to page 6, line 1. As such, the radiant barrier material recited in the present claims is not employed for decorative purposes (i.e., does not possess a mechanically a simulated wood grain finish on both of its exposed outer surfaces). Additionally, since the radiant barrier material recited in the present claims includes apertures, such an exposed outer surface does not possess a smooth, voidless surface as described in Wentworth, but rather amount amounts to an impermissible substantial redesign. One skilled in the art, upon reading Wentworth, would therefore not be motivated to obtain an article of manufacture that possess neither a smooth finished surface, nor a decorative surface finish.

Because Wentworth teaches away from employing, on the outer surface(s), radiant barrier material having apertures extending therethrough, a *prima facie* case of obviousness cannot be maintained. Accordingly, Applicants respectfully request reconsideration and withdrawal of the rejection.

II. A general relationship between fields of prior art preferences is not sufficient to suggest the motivation

A general relationship between the fields of prior art references to be combined is insufficient to suggest the requisite motivation to establish a *prima facie* case. *Interactive Techs. Inc. v. Pittway Corp.*, Civ. App. No. 98-1464, slip op. at 13 (Fed. Cir. June 1, 1999) (unpublished).

The Official Action alleges that a general relationship between the fields of Hageman and Wentworth provides the motivation to combine such references. In doing so, the Official Action states:

Because both references are concerned with a similar technical field, namely that of wood composite manufacturing, one would have a reasonable expectation of success from the combination Official Action, page 3.

Applicants respectfully submit that not only is a general field relationship legally insufficient to establish *prima facie* obviousness, but in the case at hand, no reasonable person of ordinary skill would even contemplate using densely packed and adhered wood particles to establish a smooth, outer simulated wood grain finish, as taught by Wentworth, in lieu of an outer metallic radiant barrier material with apertures, as claimed by Applicants and assertedly taught by Hageman (see, Official Action, page 2).

Because the asserted general wood composite manufacturing relationship between Hageman and Wentworth is not legally sufficient to suggest the requisite motivation, a *prima facie* case of obviousness cannot be maintained. Accordingly, Applicants respectfully request reconsideration and withdrawal of the rejection.

IIIA. The claimed invention was not "obvious to try"

The Official Action alleges that multiple aspects of the claimed invention were obvious to try at the time the invention was made. In doing so, the Official Action states:

it would have been obvious for one of ordinary skill in the art at the time the invention was made to cure all resins in the composite in a single curing step, as taught by Wentworth ('984), in the process of Hageman ('814) because of known benefits on in-line manufacturing such as more efficient processing and lower energy cost for production. ... one would have a reasonable expectation of success from the combination Official Action, pages 2 and 3, section 9.

it would have been obvious to one of ordinary skill in the art at the time the invention was made to use routine experimentation to determine an optimum perforation diameter and perforation surface density in the process of Hageman ('814) because Hageman ('814) specifically teaches that the diameter of the perforation and the perforation surface density are result-effective variables. Official Action, page 2.

it would have been obvious for one of ordinary skill in the art at the time the invention was made to use routine experimentation to determine an optimum combination of phenol, formaldehyde, and melamine resins for the admixture (first resin) in the process of Hageman ('814) in view of Wentworth ('984) because Wentworth ('984) specifically teaches the admixture (first resin) depends on the product final use and method of making, and as such teaching that the admixture (first resin) is a result-effective variable. Official Action, page 5.

it would have been obvious to one of ordinary skill in the art at the time the invention was made to use routine experimentation to determine an optimum dimension of the wood flakes in the process of Hageman ('814) in view of Wentworth ('984) because Wentworth ('984) specifically teaches that the dimensions of the wood flakes have certain structural properties associated with them, and as such teaches that the wood flake dimensions are a result-effective variable. Official Action, page 6.

it would have been obvious to one of ordinary skill in the art at the time the invention was made to use an aluminum foil thickness of 0.0001 inches (1 mil), as taught in Naipawer, III et al. US

2002/0037405 A1, in the process of Hageman ('814) in view of Wentworth ('984) because Naipawer, III et al. US 2002/0037405 A1 teaches that the aluminum foil, with a thickness of 0.5 to 3 mils provides a surface with high reflective properties against sun rays (paragraph 15). Because both references are concerned with a similar technical field, namely that of composite materials utilizing an aluminum foil layer within, one would have a reasonable expectation of success from the combination. Official Action, page 7.

it would have been obvious to one of ordinary skill in the art at the time the invention was made to use the 50 lbs kraft paper, as taught in Adelman ('360), as the liner board backing material in the process of Hageman ('814) in view of Wentworth ('984) because kraft paper permits moisture to pass through avoiding problems associated with fungal growth and wood degradation. Because both references are concerned with a similar technical field, namely that of composites incorporating a permeable kraft paper layer, one would have a reasonable expectation of success from the combination. Official Action, page 8.

it would have been obvious for one of ordinary skill in the art at the time the invention was made to provide polyethylene as the adhesive, as taught by Fahmy ('280), to the radiant barrier wood-board composite manufacturing process of Hageman ('814) in view of Wentworth ('984) because of known adhesive qualities of polyethylene when cured. Because both references are concerned with a similar technical field, namely that of wood-based composites using a foil layer, one would have a reasonable expectation of success from the combination. Official Action, page 9.

it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide a third resin to adhere the paperboard (backing material) to the metallic foil, as taught in Fahmy ('280), in the process Hageman ('814) in view of Wentworth ('984) because known adhesive qualities polyolefin resins have when used as an adhesive between two surfaces. Because both references are concerned with a similar technical field, namely that of wood-based composites using a foil layer, one would have a reasonable expectation of success from the combination. Official Action, pages 9-10.

it would have been obvious for one of ordinary skill in the art at the time the invention was made to use the polyvinyl acetate

polymer adhesive, as taught in Hageman ('814), as the third resin to adhere the backing material to the metallic foil, as taught in Fahmy ('280), in the process of Hageman ('814) in view of Wentworth ('984) which uses polyvinyl acetate as the adhesive resin. Because both references are concerned with a similar technical field, namely that of wood-based composites using a foil layer, one would have a reasonable expectation of success from the combination. Official Action, page 10.

it would have been obvious to one of ordinary skill in the art at the time the invention was made to use routine experimentation to determine an optimum temperature and time to cure the resin binders (adhesives) in the process of Hageman ('814) in view of Wentworth ('984) because it is well known to use different temperatures and exposure times with different resin binders (adhesives), and as such teaching that cure temperature and exposure time are result-effective variables. Official Action, page 11.

it would have been obvious to one of ordinary skill in the art at the time the invention was made to use wood particles from pine, oak, and maple, as taught in Speaks ('798), in the process of Hageman ('814) in view of Wentworth ('984) because of known structural properties of pine, oak, and maple. Because both references are concerned with a similar technical field, namely that of wood board composites including OSB, one would have a reasonable expectation of success from the combination. Official Action, page 12.

it would have been obvious to one of ordinary skill in the art at the time the invention was made to use routine experimentation to determine an optimum pressure to effectively cure the resins in the process of Hageman ('814) in view of Wentworth ('984) because it is well known to use different pressures to cure different resins, and as such teaching that cure pressure is a result-effective variable. Official Action, page 13.

it would have been obvious to one of ordinary skill in the art at the time the invention was made to use spike rolling for the formation of the apertures in the radiant barrier material, as taught in Wilson ('495), with the wood-board composite manufacturing process of Hageman ('814) in view of Wentworth ('984) because apertures allow for a higher moisture permeability beneficial to the reduction of fungal growth. Because both references are concerned with a similar technical field, namely that of manufacturing composites

with radiant barriers, one would have a reasonable expectation of success from the combination. Official Action, page 14.

it would have been obvious to one of ordinary skill in the art at the time the invention was made to reverse the order in which the apertures are made to the radiant barrier material. Official Action, page 14.

it would have been obvious to one of ordinary skill in the art at the time the invention was made to use UV light radiation or electron beam, as taught in Radcliffe ('408), with the wood-board composite manufacturing process of Hageman ('814) in view of Wentworth ('984) because of known benefits of UV radiation and electron beam energy such as higher control of curing rates. Because both references are concerned with a similar technical field, namely that of engineered wood composites, one would have a reasonable expectation of success from the combination. Commonly, ultraviolet, microwave, beta radiation, gamma radiation, infrared, and radio frequency are all wave-based radiations. Official Action, page 15.

Applicants respectfully point out to the Examiner that (1) there was no awareness in the art of the problem solved by the claims, and (2) Applicants were the first to see the problem itself and successfully solve it. The problem solved by the claims includes the ability to manufacture a radiant barrier oriented strand board, formed via an "in-line" method, which method does not possess the multiple inherent drawbacks associated with the "post press" method. Such drawbacks include, e.g., the installation of additional machinery employed in the manufacturing of a "post press" radiant barrier product, as well as the ongoing labor costs associated with the additional machinery.

None of the cited references identify any awareness that the above drawbacks (i.e., problems) could be solved or eliminated. In fact, the cited references, including Hageman and Wentworth, advocate for the post press application of a radiant barrier to an oriented strand board. For example, as noted by the Official Action, "Hageman ('814) does not teach the curing of the [board and reflective layer] resins in a single step" (Official Action, page 2). As another example, Wentworth states:

Following completion of the press cycle, which requires 1 to 10 minutes depending upon the thickness and desired density of the

finished mat sections 73, the formed particleboard sections are removed from the multi-opening press by a common press unloading cage 81 and are placed on a roller conveyor 82 for delivery to storage or further processing equipment. U.S. Patent No. 4,364,984, column 13, lines 17-23, emphasis added; see also, column 4, lines 21-24.

Applicants were the first to identify the above drawbacks, and Applicants were the first to successfully eliminate the drawbacks. Applicants did so by manufacturing the radiant barrier oriented strand board via an "in-line" method. When there is no awareness in the art of the problem solved by the claims and the inventor was the first to see the problem itself and solve it, the invention is patentable. The Court of Customs and Patent Appeals (CCPA) agreed:

It is established law that the difficulty encountered in discovering the defects of existing devices may be taken into consideration in determining the question of invention where the defect has been remedied. This is especially true where the cause of the defect is obscure and discovered only after it had long existed and after much research. The decisions have gone so far as to hold that where the defect of a prior art device had long existed and the cause of the defect was not discovered until after much experimentation, invention might be present, even though the remedy be simple or be suggested by the discovery of the defect or by the prior art. See, *In re Atkinson*, 102 F.2d 882, 41 USPQ 308, 311 (CCPA 1939).

More recently, the Court of Customs and Patent Appeals (CCPA) stated:

It should not be necessary for this court to point out that a patentable invention may lie in the discovery of the source of a problem even though the remedy may be obvious once the source of the problem is identified. This is part of the 'subject matter as a whole' which should always be considered in determining the obviousness of an invention under 35 USC 103. See, *In re Nomiya*, 509 F.2d 566, 184 USPQ 607, 612 (CCPA 1975)(emphasis added). See also, *In re Bisley*, 197 F.2d 355, 94 USPQ 80, 86-87 (CCPA 1952) (stating "the conception of a new and useful improvement must be considered along with the actual means of achieving it in determining the presence or absence of invention. The discovery of a problem calling for an improvement is often a very essential element in an invention correcting such a problem")(emphasis added).

Applicants identified the above inherent drawbacks associated with manufacturing a radiant barrier oriented strand board formed via the “post press” method. None of the cited references identify the above inherent drawbacks associated with the “post press” method. Applicants solved the above problems by manufacturing a radiant barrier oriented strand board formed via an “in-line” method.

Because Applicants were the first to identify inherent drawbacks associated with manufacturing a radiant barrier oriented strand board formed via the “post press” method, and solved the above problems, the obvious rejection cannot be maintained. Accordingly, Applicants respectfully request reconsideration and withdrawal of the rejection.

IIIB. “Common sense” perspective under KSR v. Teleflex

In *KSR v. Teleflex* (550 U.S. ___, 127 S. Ct. 1727 (2007)), the Supreme Court of the United States denounced procedures that bar the use of “common sense” in multiple instances, including where “[r]igid preventative laws that deny fact finders recourse to common sense, however, are neither necessary under our case law nor consistent with it.” Applicants respectfully point out that given the benefits of Applicants’ inventive methods recited in the present claims, as noted by the Official Action (see, page 2), if the presently claimed methods were “obvious to try” as the Official Actions states, then Hageman and others would not have employed an inferior method to manufacture a radiant barrier oriented strand board via a “post press” method, wherein such methods include the drawbacks and problems described above. To do so would lack common sense. This is especially so considering Hageman applied for, and received an issued U.S. patent concerning an article of manufacture that is formed via a “post press” method. Considering the “best mode” requirement of 35 U.S.C. §112, Hageman would have employed, disclosed, and possibly claimed, the superior “in-line” method, had such a method been “obvious to try” to the skilled artisan, Hageman.

Accordingly, Applicants respectfully request reconsideration and withdrawal of the rejection.

Advisory Action

The Advisory Action dated 04 December 2007 states that Applicant argues that the references do not suggest a blanket of oriented flakes with a radiant barrier (emphasis in original), and further adds that Hageman (U.S. Patent No. 5,231,814) is using OSB which is known in the art to contain flakes or particles of wood (citing Applicant's specification at page 12). The Advisory Action also states that Wentworth (U.S. Patent No. 4,364,984) (citing column 8, lines 58-68) discloses forming flakes. See, Advisory Action dated 04 December 2007, paragraph 3.

Applicant has amended the claims to more clearly recite the claimed invention. Specifically, Applicant has amended the claims such that they recite contacting a blanket of substantially oriented uncured flakes with a radiant barrier material. Applicant respectfully maintains that none of the references teach or suggest contacting a blanket of oriented uncured flakes with a radiant barrier. Specifically, none of the references teach or suggest contacting a radiant barrier and a blanket of oriented flakes that are uncured, and subsequently curing. Applicant believes the claim amendments described above obviate the rejections of the pending claims under 35 U.S.C. § 103(a).

Accordingly, Applicants respectfully request reconsideration and withdrawal of the rejections.

PRELIMINARY AMENDMENT

Serial Number: 10/731,067

Filing Date: December 9, 2003

Title: WOOD-BASED COMPOSITE PANEL HAVING FOIL OVERLAY AND METHODS FOR MANUFACTURING

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Dkt: 3487.008US2

CONCLUSION

Applicants respectfully submit that the claims are in condition for allowance and notification to that effect is earnestly requested. The Examiner is invited and encouraged to telephone Applicants' attorney (612) 359-3261 to facilitate prosecution of this application.


If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

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CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being filed using the USPTO's electronic filing system EFS-Web, and is addressed to: Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 26th day of December 2007.

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Name

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